

JAN-27-93 WED 15:10 LEIBOWITZ & SPENCER

FAX NO. 305 530 9417

Original

P.26

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 27 1993

LEIBOWITZ & SPENCER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

MATTHEW L. LEIBOWITZ, P.A.
JOHN M. SPENCER, P.C.
JOSEPH A. BELISLE

OF COUNSEL
SANFORD L. BOHRER
SID DAVIDOFF
JEROME M. BECKER
805 3RD AVENUE
34TH FLOOR
NEW YORK, N.Y. 10158

SUITE 1450
AMERIFIRST BUILDING
ONE SOUTHEAST THIRD AVENUE
MIAMI, FLORIDA 33131-1715

TELEPHONE (305) 530-1322
TELECOPIER (305) 530-9417

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
SUITE 500
1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036

* NOT ADMITTED TO
FLORIDA BAR

January 27, 1993

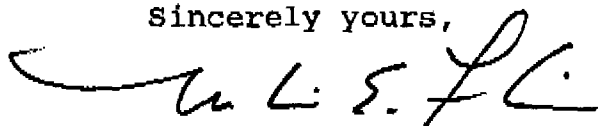
Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: Rule Making Comments
MM Docket No. 92-266

Dear Ms. Searcy:

Transmitted on behalf of Monroe County, Florida, please find an original plus nine copies of its Comments in the Cable Television Rule Making presently before the Federal Communications Commission in MM Docket No. 92-266.

Sincerely yours,




Martin Firestone
Counsel for
Monroe County, Florida

MF/mdr

Enclosures

No. of Copies rec'd
List A B C D E



RECEIVED

JAN 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of Section 8 of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket No. 92-266

COMMENTS

1. Monroe County, Florida, through undersigned counsel, hereby submits its comments in the Federal Communications Commission's Rulemaking in the matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 concerning Rate Regulation.

2. The Commission is requesting comments with respect to its adoption of rules and regulations establishing the standards and requirements for regulation by local franchising authorities of the rates to be charged by cable television systems for the provision of basic program services to their subscribers. Several mechanisms have been proffered by the Commission by which this goal can be implemented. Regardless of the rate regulatory method it ultimately adopts, the Commission should, indeed must be sensitive to the unique circumstances and needs of the many jurisdictions with small population bases, limited resources and whose residents are dependent upon cable television not merely for multi-channel video service but virtually any video service.

3. It is precisely in the "smaller" jurisdictions that regulation of cable television rates is most needed to protect consumers of cable television service and where the exercise of such regulation may be the most difficult and burdensome for the local authorities to implement. Monroe County is prototypical of such a jurisdiction.

4. Monroe County effectively is comprised of the Florida Keys, a chain of islands stretching some 120 miles from the Florida mainland to the City of Key West, the southernmost city in the United States. Monroe County's permanent resident population of some 77,000 is distributed in varying degrees of density along this 120-mile island chain. Consequently, because of its geography, it is technically impossible for any single television station (or, for that matter radio station) to provide coverage and service to the entire County from any single transmission site. Moreover, because of Monroe County's small population and its distribution pattern, the costs-benefits of constructing multiple television facilities to provide coverage of the entire County has not justified the undertaking of such an effort by the private, commercial sector.

5. Consequently, and historically, then, residents of Monroe County have been dependent totally upon external sources for television service. At present, such service is provided to County residents by a single cable television system and a television translator system owned and operated by Monroe County and supported by an ad valorem tax paid by all residents of the County. The

County television translator system retransmits the signals of the ABC, CBS and NBC television affiliates in Miami, Florida as well as the PBS television station serving that city.

6. A recent survey conducted by Monroe County revealed that 94% of all the households in the County subscribe to the local cable television system with the remaining 6% choosing the rather limited service afforded by the County-owned television translator system. Thus, the degree to which residents of Monroe County have become dependent on the local cable television translator system for service is patent. This dependency is exacerbated by the fact that any resident wishing to terminate cable service will be required to purchase and install a sophisticated, expensive rooftop antenna.

7. Given the above circumstances, it is incumbent upon, indeed, the obligation, of Monroe County to insure that its residents are provided, at the very least, with basic cable television service at fair and reasonable rates. In fulfilling this obligation, however, Monroe County with its small population and tax base, and in an era of increasing public demands on local government and decreasing federal and state aid, simply cannot commit the same resources to rate regulation as cities and counties in the country's major metropolitan areas.

8. Consequently, Monroe County urges that the rules and regulations the Commission adopts for the exercise of rate regulation by local franchising authorities not discriminate against the smaller and, in most instances, less affluent

jurisdictions. Rather, fairness and equity dictate that such rules and regulations be premised upon a "lowest common denominator" principle. Specifically, the Commission now is considering two generic approaches to rate regulation, i.e., benchmarking and cost of operation. Whichever the Commission selects ultimately, the Commission's requirements and procedures for its application by local franchising authorities should insure that even the smallest as well as the largest jurisdiction can qualify for and be capable of its proper implementation.

9. The Commission must realize and appreciate, as a practical matter, the limitations imposed upon small franchising authorities solely by their size. These limitations, however, should not be cause or reason to restrict the ability of these small franchising authorities to regulate cable television rates in the best interests of their citizens.

10. Indeed the size and resources of local franchising authorities impacts upon virtually every issue as to which the Commission has requested comments. Thus, Monroe County concurs that the Commission's rate certification of local franchising authorities should insure that all interested parties have a realistic opportunity to express and have their views considered. This certification process, however, must take into account the varying administrative resources and capabilities of the local franchising authorities requesting certification. Smaller local franchising authorities may not, and most probably cannot, implement exhaustive due process and review procedures that are

well within the staff and budgetary capabilities of those in major population centers.

11. Monroe County's "lowest common denominator" approach would eliminate the problem of the disparate capabilities of smaller and larger local franchising authorities. The approach would also remove much of the administrative burden entailed in the Commission's review of the certification requests from these varied franchising authorities. If Monroe County's suggested approach is not adopted, then fairness requires that each certification request be considered on its own, individual merits and in the context of the size and resources of the requesting local franchising authority.

12. Similarly, Monroe County agrees that it is in the best interest of all parties, i.e., local franchising authorities, cable television operators and the public they serve, that proposed rate increases be given expeditious consideration and prompt disposition. Smaller local franchising authorities, however, as a consequence of their more limited resources will require more time than those in the larger more populous communities to consider all the elements of such requests.

13. Therefore, with regard to the matter of notices of proposed rate increases, Monroe County again urges that its suggested "lowest common denominator" approach be adopted. The maximum possible time, consistent with the best interests of all affected parties, should be allowed before such increases would become effective in the absence of action by the local franchising

authority. This approach would insure that cable television subscribers in smaller franchising jurisdictions would be afforded some protection against imposition of "automatic" rate increases to which cable television subscribers in the larger, more populous jurisdictions would not be subject simply because of the greater resources of their local franchising authority.

14. To protect cable television subscribers in smaller franchising jurisdictions from the potential of such discriminatory treatment, Monroe County would recommend that the Commission adopt a 120 day period for notices of proposed rate increases. At the very least, a period of not less than 90 days should be adopted.

15. In asserting rate regulatory authority, Monroe County is confronted with a somewhat unique situation as to the structure of the basic tier service which would be subject to that authority. As noted above, Monroe County is without any local television signals which would qualify as "must carry" as defined by Sections 614 and 615 of the Communications Act. Consequently, even the most basic television services, i.e., the signals of ABC, CBS and NBC network affiliates, Fox Network/Independent and Public Broadcasting stations are "distant" signals in Monroe County and can be carried by the local cable television system only if "retransmission consent" is obtained from the originating stations. Therefore, under the Act and the proposed rules, Monroe would not be able to regulate rates charged for these signals, which in most other markets would be part of the basic tier and thus, subject to rate regulation

16. Given these circumstances, the 95% of Monroe County's households which essentially are totally dependent upon the local cable television system for their service face the loss of any local rate regulatory protection.

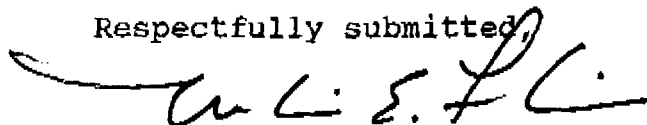
17. Certainly, there are many small and/or geographically isolated franchising areas which, if not in the precise situation as Monroe County, nevertheless are not served locally by a full complement of "must carry" basic signals, i.e., the three major national networks, a Fox Network/Independent and Public Broadcasting stations. There too, as in Monroe County, subscribers to the local cable television service will be deprived of local rate regulation of the most fundamental of television services.

18. Monroe County, therefore, proposes that in any franchising jurisdiction where there is not a full complement of local basic television services, i.e., three major national network affiliated stations, a Fox/Independent and Public Broadcasting Station, which qualify as "must carry" status pursuant to Sections 614 and 615 of the Communications Act, the Commission determine that these "distant signals" be considered local for rate regulation purposes. In doing so, the Commission would thus empower Monroe County, and other similarly situated local franchise authorities to regulate rates for what is in essence basic tier services. Accordingly, Monroe County cable subscribers will be afforded the same local rate regulatory protection as cable subscribers in larger markets.

19. Franchising authorities in small jurisdictions, unlike

most cable operators, do not have the in-house legal staffs or the financial resources to hire "outside" Washington counsel to represent their interests informally or in hearings before the Commission. Consequently, Monroe County believes that fair and equitable implementation of rate regulation in both small and large franchising jurisdictions dictates that all rate proceedings before the Commission be through written records, with no ex parte contacts by any party and the appropriate forums for the appeal or review of Commission rate making decisions are the local Federal District courts. As a practical matter, requiring local franchising authorities and adversely affected cable television subscribers, particularly those in the small franchising jurisdictions, to conduct their appeals in Washington, D.C. imposes an unfair handicap upon them which can prevent effective prosecution of their appeals.

Respectfully submitted,



Martin Firestone, Esq.
Counsel for
Monroe County, Florida

January 27, 1993

Martin Firestone, Esq.
1212 Georgia Street
Key West, Florida 33040
(305)745-8850